

PUBLIC MEETING MINUTES

August 7, 2008

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Neuwald called the meeting to order at 10:00 a.m.

Members Present

Karen L. Neuwald, Chair
Sally M. McKeag, Member
Robin W. Wesley, Member
Alice Dowdin Calvillo, Member

Tiffany Rystrom, Member (Excused)

Staff Present

Tami Bogert, General Counsel
Les Chisholm, Division Chief, Office of the General Counsel
Bernard McMonigle, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

Chair Neuwald called the Board to order for a return to the open session of the June 12, 2008 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session in June, the Board has issued PERB Decision Nos. 1953a-M, 1961-S, 1962-M, 1963, 1964, 1965, 1966-H, 1967-S, 1968-M, 1969, and 1970-H. In request for injunctive relief (I.R.) No. 550 (California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)), the request was denied; I.R. No. 551 (California Correctional Peace Officers Association v. State of California (Department of Corrections & Rehabilitation, Department of Personnel Administration)), the request was denied; I.R. No. 552 (San Bernardino Public Employees Association v. City of Rancho Cucamonga), the request was denied; and in I.R. No. 553 (Regents of the University of California v. AFSCME Local 3299), the request was granted on two limited grounds: (1) the union's failure to give the university the exact dates for the Service Unit strike was an unlawful

pressure tactic and should be enjoined; and (2) specifically identified “essential employees” from the Patient Care Technical Unit should be enjoined from “honoring” the Service Unit strike during their working hours. A document containing a listing of the aforementioned decisions was made available at today’s meeting.

Motion: Motion by Member Wesley and seconded by Member Dowdin Calvillo to close the June 12, 2008 public meeting.

Ayes: Neuwald, McKeag, Wesley, and Dowdin Calvillo.

Motion Carried.

Chair Neuwald opened the meeting of August 7, 2008 and Member Wesley led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Dowdin Calvillo and seconded by Member McKeag that the Board adopt the minutes of the Public Meeting of PERB for June 12, 2008.

Ayes: Neuwald, McKeag, Wesley, and Dowdin Calvillo.

Motion Carried.

Comments From Public Participants

None.

Staff Reports

a. Administrative Report

Chief Administrative Officer Eileen Potter briefly reported to the Board on two matters. She first reported that PERB was in the beginning stages of the budget process for Fiscal Year (FY) 2009-2010. She stated that this process included preparation of various budget documents for the prior, current, and budget year. Second, Ms. Potter reported that the relocation of the Los Angeles Regional Office is on track with an anticipated move not later than the end of October.

In conclusion of her report, Ms. Potter announced that for an impressive fourteen consecutive years PERB’s Senior Accounting Officer, Paula Crouch, had closed the year-end process on time with the submission of all required financial reports.

Chair Neuwald acknowledged and thanked Ms. Crouch for her exemplary work and contributions to PERB.

b. Legal Report

General Counsel Tami Bogert reported that the case processing and litigation reports had been distributed to the Board for its review. She summarized recent case processing activities, 2007-2008 fiscal year-end statistics, and provided an update on litigation matters.

With regard to the case processing report, Ms. Bogert summarized that during the months of June and July, 195 new cases were filed, 199 case investigations were completed and 43 informal settlement conferences were conducted by staff. Case processing activities include investigations and staff disposition of cases filed with PERB (cases filed include unfair practice charges, representation matters, and impasse requests). Ms. Bogert also reported that during the same two-month period, four requests for injunctive relief were considered and completed by the Board as follows: three were denied, and one was granted on a limited basis. The case granted on a limited basis involved the University of California and AFSCME Local 3299 (I.R. No. 553). PERB did seek and obtained a temporary restraining order in this matter.

Ms. Bogert then reported that during FY 2007-2008 a total of 1,113 new cases were filed, 1,066 case investigations were completed, 296 informal settlement conferences were conducted, and 28 requests for injunctive relief were filed. She stated that the fiscal year-end numbers provided today were approximations and that the final numbers would be included in PERB's Annual Report.

In matters involving litigation, Ms. Bogert reported first on the essential-employee-strike cases. Published opinions have now been rendered from all three courts of appeal in which the jurisdictional matter was heard. Two of the courts, the Third District Court of Appeal and the Sixth District Court of Appeal, held that PERB has the exclusive initial jurisdiction to determine whether essential employees may strike in cases implicating the Meyers-Milias-Brown Act. (County of Sacramento v. AFSCME Local 146 et al./County of Sacramento v. AFSCME Local 146 et al., Third Appellate District, Case Nos. C054060, C054233, Sacramento County Superior Court Case Nos. 06AS03704, 06AS03790; City of San Jose v. Operating Engineers Local Union No. 3 (Local 3), Sixth Appellate District, Case No. H030272, Santa Clara County Superior Court Case No. CV064707.) In the third court, the First District Court of Appeal held that the superior court, not PERB, has jurisdiction in these cases. (County of Contra Costa v. Public Employees Union Local One et al./County of Contra Costa v. CA Nurses Assn. et al., First Appellate District, Case Nos. A115095, A115118, Contra Costa County Superior Court Case Nos. MSC0601228, MSC0601227.) To date, two of the three cases have been appealed (County of Contra Costa, First Appellate District, and City of San Jose, Sixth Appellate District) and review was granted in both by the California Supreme Court.

Ms. Bogert finished her report on litigation updating the Board on a case involving the California Teachers Association (CTA). CTA recently filed its opening brief in the Fourth District Court of Appeal in California Teachers Association v. PERB; Journey Charter School (Division Three, Case No. G040106), which is a case bringing legal challenge to

PERB Decision No. 1945. PERB Decision No. 1945 involved a dismissal of a retaliation case under the Educational Employment Relations Act. PERB's response to CTA's opening brief will be due at the end of this month.

Ms. Bogert responded to questions asked regarding requests for injunctive relief filed in FY 2007-2008. Member Dowdin Calvillo asked, of the 28 requests filed how many were granted, and Chair Neuwald wanted to know whether the number of requests filed was consistent with most years. While stating that the exact numbers for both questions would be provided following today's meeting, Ms. Bogert reported that the number of requests granted was fewer than five and the number of requests for injunctive relief filed FY 2007-2008 appeared to have increased. She stated that the General Counsel's Office was averaging two or more filings per month. In the past, requests for injunctive relief were not often filed with PERB. Ms. Bogert said more detailed information would be provided to the Board and that this information would also be available in PERB's Annual Report.

Chair Neuwald then asked if the number of litigation cases handled by PERB was up from prior years. Ms. Bogert responded that litigation had increased.

Chair Neuwald also wanted to know if the Supreme Court had any deadlines regarding when it had to render a decision in a case.

Ms. Bogert explained, using the essential-employee-strike cases as an example, that after an opening brief is filed, a response brief and then a reply brief are due. From the time that briefing is complete, the Supreme Court can take several months to one year to schedule oral argument. Once oral argument occurs, decisions are usually rendered within a 90-day time period. She concluded that in the essential-employee-strike litigation, PERB could likely see a decision rendered sometime in 2009.

Chief Administrative Law Judge Bernard McMonigle reported on the activities in the Division of Administrative Law stating that in FY 2007-2008 the caseload had remained relatively constant with recent years. He stated that the administrative law judges (ALJ) issued 44 proposed decisions and that the average number of days from submission of a decision to issuance is 94, adding that in the future there should be a decrease in this number. Mr. McMonigle reported that the number of new cases assigned in FY 2007-2008, 84, decreased as compared to the last couple of years. Noting that the General Counsel's Office had 32 informal settlement conferences scheduled, he stated that traditionally half will settle and the other half will be assigned for formal hearing. The division has 34 decisions to write, of which most were carried over from the last fiscal year. Each ALJ typically writes 8-10 decisions a year and with 34 decisions to write, that would mean a carryover for at least three ALJs. This number and carryover is also expected to decrease. As has been the traditional goal of PERB, hearing dates are now scheduled within the 60-90 day range after the settlement conference is held. Five new cases were assigned for formal hearing in July.

Mr. McMonigle concluded his report stating that he would be working with the General Counsel's Office regarding the ALJ's conducting informal settlement conferences. The

ALJs have recently resumed conducting these conferences and will increase their participation in this activity. Years ago at PERB, informal settlement conferences were conducted entirely by the Division of Administrative Law staff. In recent years, when there was a decrease in the ALJ staff, and there were many hearings and decisions to write, the General Counsel's Office took over the role of conducting these conferences. Conducting settlement conferences will now be a shared activity with the division and the General Counsel's Office.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported on one legislative matter at today's meeting. He reported that Senate Bill 1296 (Corbett) has now received final legislative approval and is in the process of being transmitted to the Governor. SB 1296 is the legislation to move back to the courts from PERB jurisdiction disputes involving firefighters and interest arbitration. Based on a recent announcement by the Governor, Chair Neuwald added that this legislation may actually be held in the Legislature.

Motion: Motion by Member McKeag and seconded by Member Wesley that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be received.

Ayes: Neuwald, McKeag, Wesley, and Dowdin Calvillo.

Motion Carried.

Old Business

None.

New Business

None.

General Discussion

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through October 16, 2008 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Motion: Motion by Member Wesley and seconded by Member Dowdin Calvillo that there being no further business, the meeting be recessed to continuous closed session.

Ayes: Neuwald, McKeag, Wesley, and Dowdin Calvillo.

Motion Carried.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Karen L. Neuwald, Chair